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MM Docket No. 93-124

) **File No. BPH-920109MA**

) File No. BPH-920123MD

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OPPOSITION TO REQUEST FOR RULING

Darrell Bryan, by his attorneys, hereby opposes the Request For Ruling filed by SBH Properties, Inc. ("SBH") on February 14, 1994. In support of this opposition, the following is shown:

1. SBH requests that the Presiding Judge issue a ruling that precludes Darrell Bryan from receiving comparative credit for certain of his claimed civic activities on the grounds that Bryan produced no documents relating to any of his civic activities despite the fact that such documents were in Mr. Bryan's possession. SBH states that at his deposition Mr. Bryan testified that he did have such documents and that "denial of comparative credit for civic participation is an appropriate sanction for willful and repeated failure to produce".

2. SBH attempts to support the assertion that existing documents were deliberately withheld with excerpts from the deposition transcript. However, the excerpts themselves do not support the SBH argument that documents were withheld. Attached hereto as Attachment A is a compilation of the deposition testimony concerning documents relating to civic activities which shows that the gist of Mr. Bryan's testimony was that he was sure that there was documentation

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somewhere, either in the files of the organizations or possibly in newspaper articles, and that he had received certificates and plaques from regard to some of the organizations. Mr. Bryan searched his files and reported to counsel that he had only framed certificates or plaques. Counsel advised Mr. Bryan that he was not required to attempt to make copies of plaques or framed certificates. It is clear that Mr. Bryan was never concerned with creating a paper trail for his civic activities.

3. The SBH assertion that documents were deliberately withheld is absurd. There is no logical reason for Mr. Bryan to deliberately withhold production of documents which relating to his civic activities since documentary proof of his various leadership positions would work to Mr. Bryan's favor. Further, SBH does not claim that its efforts to question Mr. Bryan about his civic activities were impeded. It does not claim that the list of civic activities is inaccurate. It does not suggest that there is any basis for challenging any of the claimed activities. The requested sanction is totally inappropriate and unwarranted. The SBH Request for Ruling should be denied.

Respectfully submitted,

DARRELL BRYAN

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February 18, 1994

ATTACHMENT A

1. Keep Greene Clean Committee

- Q. Okay. Do you have any documents, you know, which can be any kind of document, I guess, that would substantiate the fact that you held the position as Chairman of that committee?
- A. I received a certificate. There's probably minutes from many, many chamber meetings.
- Q. You don't have copies of them?
- A. No, I wouldn't ever get those. Tr. 38.

2. Board of Directors - Chamber of Commerce

- Q. Do you have any documents that would substantiate the fact that you held that position as a member of the Board of Directors?
- A. After three years on the board, when a person goes off they only get a certificate of appreciation plaque, which I've got several plaques. My name is in all kinds of minutes. I was on a lot of committees. (Tr. 39)

3. President - Chamber of Commerce

- Q. Do you have any documents like you mentioned before, certificates or plaques or minutes or any other kind of documents that would substantiate the fact that you held the position of president of Greene County?
- A. I've got a plaque. I was glad to get it and get out. Tr. 40.

4. Vice President for Public Affairs - Chamber of Commerce

- Q. And what about when you were vice president for public affairs, is there any kind of ...
- A. They normally awarded a certificate at the annual banquet. I'm not sure if I got one. Again, you go through the chamber program and it always has all the officers listed and vice presidents listed.
- Q. Did you keep anything like a scrap book or resume file that you kept with newspaper clippings and things?

A. Yeah, I think so.

Q. Did the chamber ever publish, like a listing of the members of the board or anything of that sort?

A. Yes. Oh, yes, yes.

Q. Would you have something like that, copies of that?

A. I'm sure the chamber would.

Q. But you don't personally have that, is that what you're telling me?

A. I'm not positive of what I've kept. I have so much of that that I probably disposed of it. I think I have the year I was president, you know, did all that work. I think I had some information.

Q. And with respect to public affairs vice president would that be the same answer?

A. Yes, whatever. Again, it's listed in the...you know, they had an annual program that they put out and they had projects, all that, that would come out at the annual meeting, and then at the next annual meeting then they would talk about what each committee had done and the time spent and whatever. (Tr. 41)

Q. Let's see, the last paragraph of page 5 you refer to being chairman of the retail recruitment committee.

A. Right.

Q. In that position did you actually personally recruit businesses, or were you part of formulating a plan? It refers to that and I was just...

A. Kind of a combination, but basically, officially we could really go out, go to other towns, but we were setting up a committee and trying to find out what we needed to do to recruit new retailers, what problems our current retailers had. Again, there was quite a bit of time spent on that. We were losing some retailers because of Wal-Mart, so we were trying to find a way to bring new people in.

Q. That's fairly common.

A. Yes.

Q. So your primary function in that aspect of the chamber was to formulate a plan. Was a plan formulated?

A. We had various meetings with the retailers, you know, listening to their problems and trying to help have a better environment for retail.

Q. Would you have received a certificate or have any documents substantiating the fact that you held that position of chairman of recruitment?

A. It would be on the minutes. I don't know if we kept... some of those committees like that we didn't really keep that many minutes, but on the other hand they would report at various chamber meetings what certain committees did.

Q. The chamber didn't publish a listing of the different committees and the members?

A. Of the committee, yeah. Of the committee they did, sure. There would be all that. (Tr.42-43)

5. Chairman- Greene County FallFest

Q. Now, what about with respect to your activities and position as chairman of the Greene County FallFest and activities with the FallFest, do you have any documents, certificates of newspaper clippings or whatever, programs or whatever, that would substantiate your position, being position of chairman...

A. Sure.

Q. ...as well as activities you might have been involved in? And I talking about you now, not what the radio station would have done.

A. Yeah. That was totally separate anyway, but I've been chairman since '85 and there's been newspaper articles annually that basically...meetings where I was presiding. You know, some years they try to get them to talk to other people besides myself, you know. (Tr. 44-45).

6. Chairman, Greene County March of Dimes

Q. I was just trying to clarify that. Do you have any documents substantiating your involvement in that?

A. I'm sure I do. That's been a long time. Yeah, I know I have a certificate. I'm sure I do, or someone does. (Tr. 46)

7. Board, Vocational High School

Q. Do you have any documents to substantiate your involvement in that advisory board?

A. Yes. (Tr 47)

8. Finance Committee & Long Range Planning Committee, First Baptist Church

Q. With respect to those two committees at First Baptist Church, would you have any documents to substantiate your involvement with either of those?

A. The church would.

Q. You wouldn't?

A. You don't get certificates of appreciation for those, but the church would have documentation, yes. (Tr. 48)

9. Greene County YMCA

Q. Do you have any documents to substantiate your involvement in that?

A. I do. (Tr. 49)

10. Junior Achievement Board of Directors & Tusculum College Pioneer Club

Q. I don't know if I asked you about Junior Achievement. Do you have plaques on Junior Achievement?

A. I have plaques, yes.

Q. What about the Pioneer Club?

A. Yes. (Tr. 50)

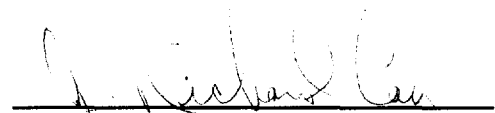
CERTIFICATE OF SERVICE

I, J. Richard Carr, hereby certify that copies of the foregoing "Opposition to Request for Ruling" were sent via first class mail, postage prepaid, or as otherwise indicated to each of the following on this 18th day of February 1994:

The Hon. John M. Frysiak*
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* Hand Delivery

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